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CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2008-0275986-00

RECORDING REQUESTED BY:

Friday, DEC 26, 2008 10:29:53
FRE \$0.00

Marina Bay Community Association
1 Marina Lakes Drive
Richmond, CA 94080

Ttl Pd \$0.00

Nbr-0004288483
lrc/R9/1-17

WHEN RECORDED, MAIL TO:

STATE OF CALIFORNIA
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: Tony Natera, Project Manager
Brownfields
and Environmental Restoration Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Contra Costa County APN: 560-181-079

AREA FF TENNIS COURTS, 206001)

MARINA BAY PROJECT, RICHMOND, CALIFORNIA

This Covenant and Agreement ("Covenant") is made by and between the Marina Bay Community Association (the "Covenantor"), the current owner of the southern portion of parcel FF, situated within the Marina Bay Redevelopment project in the city of Richmond, County of Contra Costa, State of California, described in Exhibit "A" and depicted in Exhibit "B", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of "hazardous materials" as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be

restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 23,500 square feet, is more particularly described and depicted in Exhibits "A" and "B". The Property is located in the area now generally bounded by two city owned tennis courts on the north, by housing of the Marina Bay Development, by Meeker Slough in the East and by Marina Bay parkway on the West, in the City of Richmond, County of Contra Costa, State of California. The Property is also generally described as Contra Costa County Assessor's Parcel No: 560-181-079.

1.02. The Property is being remediated pursuant to a Remedial Action Plan (RAP) pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including lead, remain in the soil under the Property, the RAP provided that a deed restriction be required as part of the site remediation. The Department circulated the RAP, together with a draft Negative Declaration prepared pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., for public review and comment. The RAP and the negative declaration were approved by the Department on May 26, 1993. Remediation included in situ encapsulation of contaminated soil and installation of a cap. In situ encapsulation consisted of burial and compaction of the contaminated soil, and the placement of (1) foot of clean soil on top of the contaminated soil. The cap consists of an asphaltic surface (tennis court) installed on top of that soil.

1.03. As detailed in the Final Health Risk Assessment as approved by the Department in 1988, all or a portion of the subsurface soils within ten feet of the surface

on the Property contain hazardous substances, as defined in H&SC section 25316, and hazardous materials as defined in H&SC section 25260, which includes lead. Based on the Final Health Risk Assessment, the Department has determined that the use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable health risk. The Department has further determined that use of the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable risk to human health or the environment, if limited to commercial and industrial, parks, or open space use.

ARTICLE II **DEFINITIONS**

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the

Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed.

This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page

one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used/developed for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital or hospice for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the property without a Soil Management Plan and a Health and Safety Plan approved by the Department in advance.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least thirty (30) days prior to any building, filling, grading, mining or excavating on the Property, whether such activities are under the control or direction of the Owner or the Owner's Occupant.

4.03. Non-Interference with the Cap. Covenantor agrees:

- (a) Activities that may disturb the cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted without prior review and approval by the Department, as required under 4.02(c).
- (b) All uses and development of the Property shall preserve the integrity of the cap.
- (c) The cap shall not be altered without prior written approval by the Department as required in 4.02(c)
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any other disturbance to the cap that could affect the ability of the cap to contain subsurface hazardous wastes or hazardous materials underneath the Property, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with

the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety, or the environment.

4.05. Access for Implementing O&M. The entity or person responsible for implementing Operation and Maintenance activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance activities until the Department determines that no further Operation and Maintenance is required.

4.06. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property verifying compliance with this Covenant, and shall submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report must include the dates, times, and names of those who conducted the inspection and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual inspection report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant, and demand that the violation cease immediately. Additionally, copies of any correspondence related to the violation of this Covenant shall be sent to the Department within 10 days of its original transmission.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this

Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Partial Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or partial termination of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all

referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Marina Bay Community Association
1 Marina Lakes Drive
Richmond, California 94804

To Department: Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710
Attention: Tony Natera, Project Manager
Brownfields and Environmental Restoration Program

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

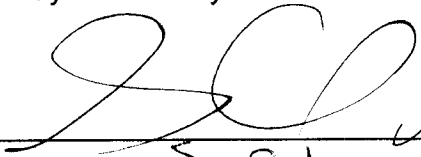
7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

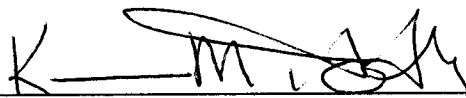
7.07. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Marina Bay Community Association

By: 
Name and Title: S. Osborn Erickson, Secretary
Date: 12-11-08

State of California
Department of Toxic Substances Control

By: 
Name and Title: Karen Toth, Unit Chief
Date: 12/17/2008

California Acknowledgment Form

State of California
County of Alameda } ss.

On December 17 2008 before me, Nicole Thuemmler Notary Public,
personally appeared Karen M. Toth

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

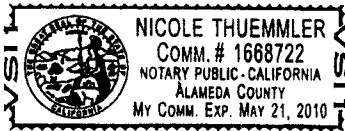
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Seal

Nicole Thuemmler

Signature of Notary



Notes

Please provide information about the document that this form is attached to.

This is not required under California State notary public law.

Covenant to Restrict Use of Property

ACKNOWLEDGMENT

State of California
County of SAN FRANCISCO } ss.

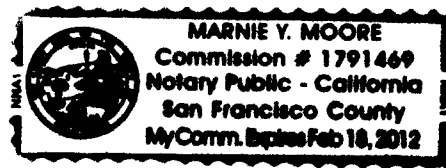
On DECEMBER 12, 2008 before me, MARNIE Y. MOORE, Notary
Public, personally appeared S. OSBORN ERIKSON

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Marnie Y. Moore
Signature



(seal)

OPTIONAL INFORMATION

Date of Document _____

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Type of Satisfactory Evidence:

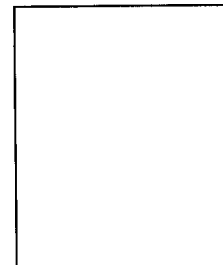
- ☐ Personally Known with Paper Identification
☐ Paper Identification
☐ Credible Witness(es)

Capacity of Signer:

- ☐ Trustee
☐ Power of Attorney
☐ CEO / CFO / COO
☐ President / Vice-President / Secretary / Treasurer
☐ Other: _____

Other Information: _____

Thumbprint of Signer



☐ Check here if no thumbprint or fingerprint is available.

EXHIBIT A

Legal Description

EXHIBIT "A"

THE PROPERTIES

The following real property located in the City of Richmond, County of Contra Costa, State of California:

LOT 1, AS SHOWN ON THE MAP OF SUBDIVISION 7753, FILED FEBRUARY 12, 1993, MAP BOOK 365, PAGE 1, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

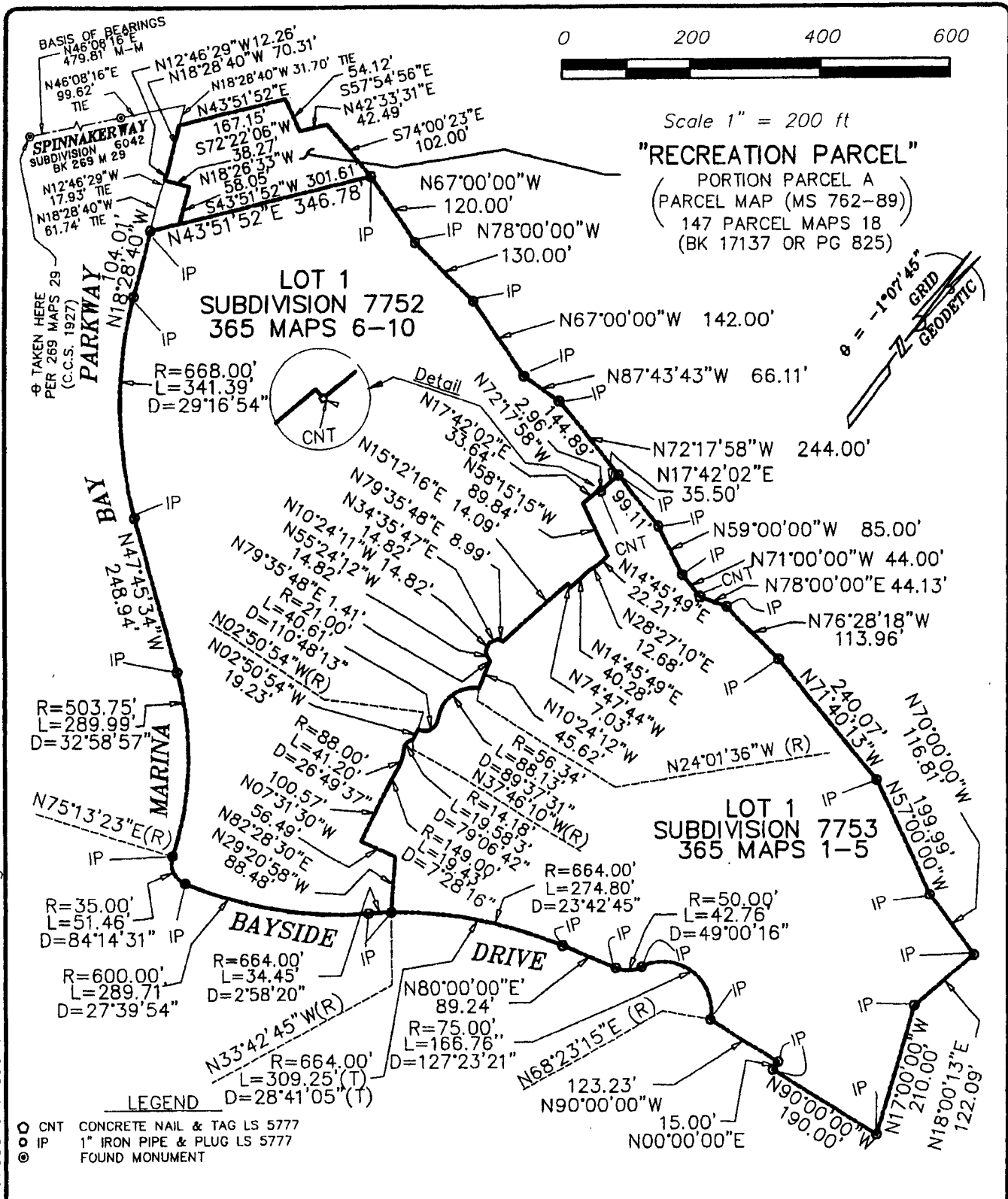
LOT 1, AS SHOWN ON THE MAP OF SUBDIVISION 7752, FILED FEBRUARY 16, 1993, MAP BOOK 365, PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; AND

A "RECREATION PARCEL" BEING A PORTION OF PARCEL A, AS SAID PARCEL IS SHOWN ON THAT CERTAIN PARCEL MAP (MS 762-89), FILED JUNE 19, 1990, IN BOOK 147 OF PARCEL MAPS, PAGE 18, BEGINNING AT THE MOST EASTERLY CORNER OF SAID PARCEL "A"; THENCE ALONG THE BOUNDARY THEREOF THE FOLLOWING COURSES: SOUTH 43°51'52" WEST 301.60 FEET, NORTH 18°26'33" WEST 58.05 FEET, SOUTH 72°22'00" WEST 38.27 FEET, NORTH 12°40'29" WEST 12.20 FEET, THENCE CONTINUING ALONG SAID BOUNDARY OF SAID PARCEL "A" NORTH 18°28'40" WEST 70.31 FEET; THENCE LEAVING SAID BOUNDARY NORTH 43°51'52" EAST 167.67 FEET; THENCE SOUTH 57°54'56" EAST 54.12 FEET; THENCE NORTH 42°33'31" EAST 42.49 FEET; THENCE ALONG SAID BOUNDARY OF SAID PARCEL "A" SOUTH 74°00'23" EAST 102.00 FEET TO THE POINT OF BEGINNING, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

Plot Plan

11/18/2004 10:01:40 AM P31



KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 1233 Quarry Lane, suite 145 (925) 249-6555
 Pleasanton, California 94566 Fax (925) 249-6563

SURVEY PLAN
CONDOMINIUM PLAN
SUBDIVISION 7752, 7753, "RECREATION PARCEL"
MARINA BAY
A CONDOMINIUM COMMUNITY
 RICHMOND CONTRA COSTA COUNTY CALIFORNIA

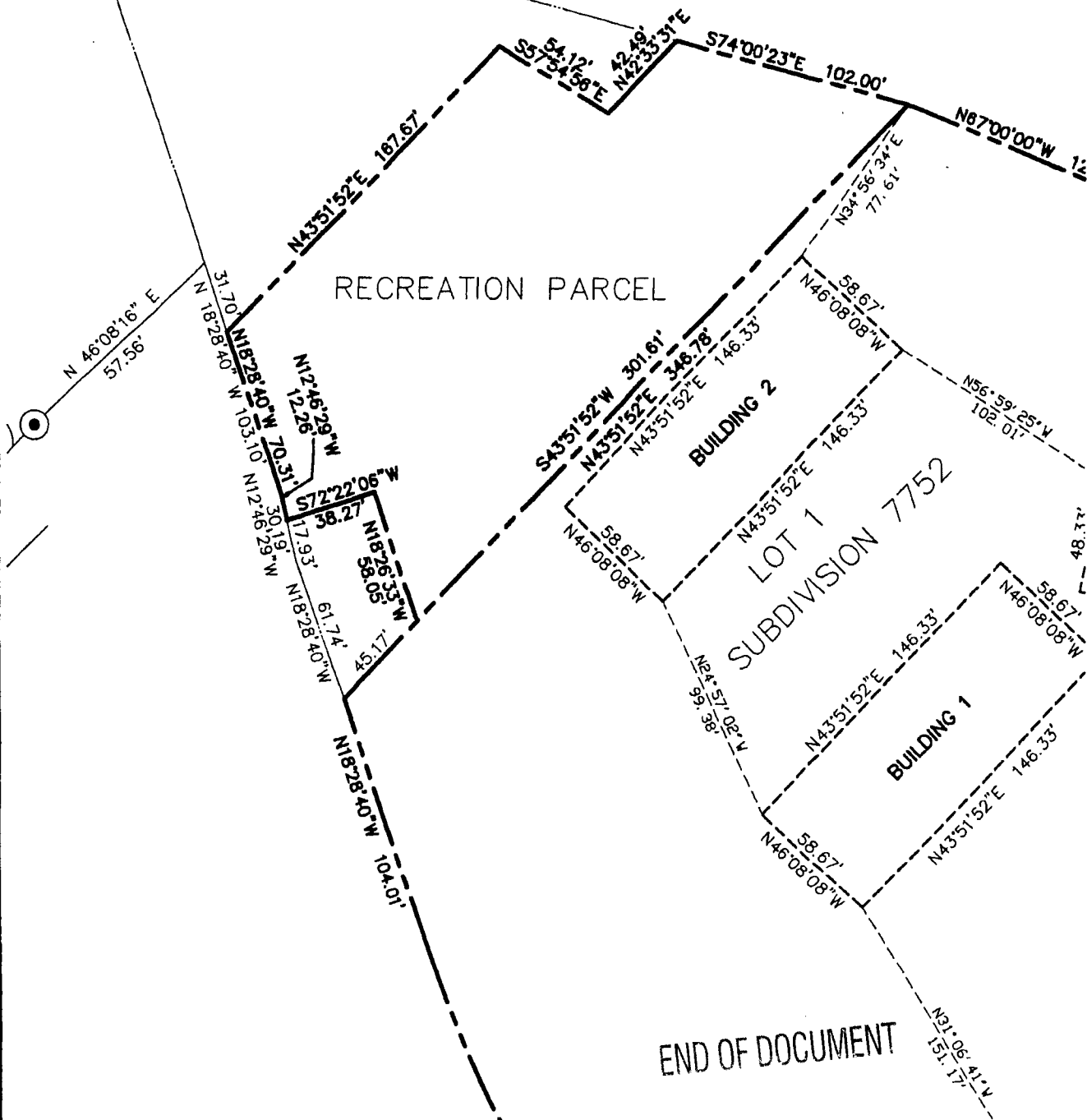
SCALE 1"=200'

DATE 11/18/2004

BY: MJF

JOB NO. 97503-3

SHT: 16 - OF - 133



KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
1233 Quarry Lane, suite 145 (925) 249-6555
Pleasanton, California 94566 Fax (925) 249-6563

BUILDING ENVELOPES
CONDOMINIUM PLAN
SUBDIVISION 7752, 7753, "RECREATION PARCEL"
MARINA BAY
A CONDOMINIUM COMMUNITY
RICHMOND CONTRA COSTA COUNTY CALIFORNIA

SCALE	1"=60'
DATE	12/4/2004
BY:	MJF
JOB NO.	97503-3
SHT:	21 - OF -133